

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**INCOME TAX REFERENCE NO. 6 OF 1997**

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the Civil
Judge?

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COMMISSIONER OF INCOME TAX - Applicant(s)

Versus

SHRI MANUBHAI M. PATEL - Opponent(s)

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Appearance :

SHRI MANISH R. BHATT for Applicant(s).

NONE for Opponent(s).

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

and

HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/11/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

The Income Tax Appellate Tribunal, Ahmedabad
Bench `B', has made this Reference under Section-256(1)

of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short), for the opinion of this Court on the following question, which arises out of I.T. Appeal No.121/Ahd/1991 pertaining to the Assessment Year 1989-90:

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the Officer was not justified in disallowing deduction claimed by way of adjustment u/s. 143(1)(a) of the Act?"

2. From the facts, it appears that the Assessee, who was working as a Development Officer of the Life Insurance Corporation of India, had filed his return for the year 1989-90, showing total income of Rs.18,260/-. The Assessing Officer, by adjustment explanatory sheet, adjusted Rs.34,562/- disallowing the conveyance allowance of Rs.18,819/- and Rs.4,700 by disallowing the incentive bonus of Rs.11,578/- and assessed the income at Rs.52,822/-. The Assessee moved an application under Section-154 of the Act for rectification as deduction of conveyance allowance and incentive bonus was not to be carried out, the application was partly allowed vide Order dated 12th February, 1990, the conveyance allowance of Rs.18,820/- disallowed earlier was allowed to be deducted out of the total income, but, the deduction from the incentive bonus remained untouched. The Assessee,

being aggrieved by the said order, filed an appeal to the Deputy Commissioner of Income Tax (Appeals) and submitted that to the extent of 40%, the Assessing Officer should have allowed the application. The contention of the Assessee before the Deputy Commissioner of Income-Tax (Appeals) was that different Benches of the Tribunal and some of the High Courts had taken the view that at least to the extent of 40% of the incentive bonus should be allowed to be deducted from the total income. The appeal was dismissed, therefore, the Assessee took up the matter before the Tribunal.

The Tribunal, after hearing the parties, took the view that as the matter was debatable, powers under Section-143(1)(a) of the Act could not be exercised though other proceedings were available to the Assessing Officer. The Tribunal, accordingly, quashed the order passed by the Assessing Officer.

3. Shri Bhatt, learned Counsel for the Revenue, submits that the Tribunal was unjustified in holding that the total inclusion was bad. According to him, at least to the extent of 40% or in accordance with the judgement of this Court, deduction to the extent of 30% only could be allowed and not beyond that. His submission is that the Tribunal could not make an absolute order in favour

of the Assessee.

4. Section 143(1)(a) of the Act says that where a return has been made under Section-139, or in response to a notice under Sub.section (1) of Section 142, then, particular powers can be exercised by the Assessing Officer. Section 154 of the Act relates to rectification of mistakes. With a view to rectify any mistake apparent from the records, the Income-Tax Authorities referred to in Section-116 may amend any order passed by it under the provisions of the Act. In the present matter, proceedings were drawn under Section-143(1)(a) on the premises that such deductions were not permissible. It is not in dispute before us that on the date when the Assessee was claiming the deductions, the judgements of the Tribunal and of the different High Courts were in favour of the Assessee wherein the Tribunals or the High Courts had observed that to the extent of 40% deductions would be permissible subject to verification. We are not concerned with the judgements of the Tribunals or of the High Courts, but, the question would be that whether the Assessing Officer was justified in proceeding under Section-143(1)(a), especially, when the matter was debatable and the Assessing Officer could proceed either under Section-143(2) or Section-143(3) of the Act.

5. The Apex Court, in the matter of ***T.S. Balaram, Income Tax Officer vs. Volkart Brothers & Ors., [(1971) 82 I.T.R. 50]***, has observed that a mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.

6. From the said judgement of the Apex Court, it would be clear that in a case where the mistake is apparent from the record, powers under Section-154 of the Act could always be exercised. In the present matter, the Assessing Officer, in view of the debatable issue relating to deduction or disallowance of the deductions, could not proceed under Section-143(1)(a) of the Act.

7. The Tribunal was justified in holding in favour of the Assessee. The question referred to us is answered in the affirmative, in favour of the Assessee and against the interest of the Revenue. The Reference stands disposed of accordingly. No costs.

[***R.S.Garg, J.***]

[***D. H. Waghela, J.***]